

The taxability of maintenance agreements is dependent upon whether the charge for the agreement is included in the selling price of tangible personal property. See 86 Ill. Adm. Code 140.141. (This is a GIL.)

May 10, 2005

Dear Xxxxx:

This letter is in response to your letter dated November 29, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

The purpose of this letter is to request advice regarding the taxability of third party repair services performed on warranty contracts for sales and use tax purposes. Warranty contracts are defined as service contracts or agreements, which indemnify the holder of the contract or agreement, for the cost of maintaining, repairing, or replacing tangible personal property.

ABC is a repairer that has been hired by either the original manufacturer or a distributor to perform the warranty repairs for the end user. The warranty repairs can result from either an original manufacturers warranty included in the sale, or an optional warranty, usually for a longer period of time and purchased in addition to the sale of the tangible personal property. The original manufacturer and/or distributor resells the product, which includes the warranty, to a dealer, who then resells the entire package to the consumer, who is the end user. Our contract is with either the original manufacturer or the distributor, who may not be licensed in every state we are asked to perform the repairs in. My questions are as follows:

- 1) Are the warranty services we provide in your state as a third party repairer taxable with regards to sales and use taxes, to the original equipment manufacturer and/or their distributors, if they are related to a mandatory warranty

extended to the purchaser by the manufacturer, as part of the purchase price of the tangible personal property? If they are taxable, and the manufacturer is located out of state, will you accept either the manufacturers home state resale certificate or a letter from the manufacturer stating the sale of the services is for resale as sufficient proof of a sale for resale?

- 2) Are the warranty services we provide in your state as a third party repairer taxable with regards to sales and use taxes, to the original equipment manufacturer and/or their distributors, if they are related to an **optional** warranty (the purchaser is not required to purchase the warranty from the seller) or **extended** warranty (the contract is usually purchased at the time of purchase of the tangible personal property for a separate price and is usually in addition to and subsequent in time to the manufacturer's warranty)? Again, if it is taxable, and the manufacturer is located out of state, will you accept the manufacturers home state resale certificate as sufficient proof of a sale for resale or is your states resale certificate the only certificate allowed as proof of resale?

DEPARTMENT'S RESPONSE:

The taxability of maintenance agreements is dependent upon whether the charge for the agreement is included in the selling price of tangible personal property. If the charge for a maintenance agreement is included in the selling price of tangible personal property, that charge is part of the gross receipts of the retail transaction and is subject to Retailers' Occupation Tax liability. No tax is incurred on the maintenance services or parts when the repair or servicing is completed. See 86 Ill. Adm. Code 140.141.

If maintenance agreements are sold separately from tangible personal property, the sale of the agreement is not a taxable transaction. However, when maintenance services or parts are provided under the maintenance agreement, the company providing the maintenance or repair will be acting as a service provider under the Service Occupation Tax Act. The Service Occupation Tax Act provides that when a service provider enters into an agreement to provide maintenance services for a particular piece of equipment for a stated period of time at a predetermined fee, the service provider incurs Use Tax based upon its cost price of tangible personal property transferred to the customer incident to the completion of the maintenance service. See 86 Ill. Adm. Code 140.301(b)(3).

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess
Associate Counsel

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